

1 Jason R. Flanders (Bar No. 238007) JS-6  
2 Email: jrf@atalawgroup.com  
3 Theresa M. Trillo (Bar No. 349989)  
4 Email: tt@atalawgroup.com  
5 AQUA TERRA AERIS LAW GROUP  
6 4030 Martin Luther King Jr. Way  
Oakland, CA 94609  
Telephone: (916) 202-3018

7 Barak Kamelgard (Bar No. 298822)  
8 Email: barak@lawaterkeeper.org  
9 Benjamin Harris (Bar No. 313193)  
Email: ben@lawaterkeeper.org  
10 LOS ANGELES WATERKEEPER  
11 360 E 2<sup>nd</sup> Street, Suite 250  
12 Los Angeles, CA 90012  
Phone: (310) 394-6162

13 Attorneys for Plaintiff  
14 LOS ANGELES WATERKEEPER  
15

16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 LOS ANGELES WATERKEEPER, a  
19 California non-profit association,

20 Plaintiff,

21 v.

22 BODYCOTE THERMAL PROCESSING,  
23 INC., a Delaware corporation,

24 Defendant.

25 Case No.: 2:23-cv-07863-MRA (MAAx )

26 **CONSENT DECREE**

## Consent Decree

**WHEREAS**, Los Angeles Waterkeeper (“LA Waterkeeper” or the “Plaintiff”) is a 501(c)(3) non-profit public benefit corporation organized under the laws of the State of California, with its main office in Santa Monica, California;

**WHEREAS**, LA Waterkeeper is dedicated to the preservation, protection and defense of the surface, ground, coastal and ocean waters of Los Angeles County from all sources of pollution and degradation;

**WHEREAS**, Bodycote Thermal Processing, Inc. (“Bodycote” or the “Defendant”) owns and operates an industrial facility located at 3370 Benedict Way, Huntington Park, California 90255, under Waste Discharger Identification number 4 19I018443 (“Facility”);

**WHEREAS**, the Facility's industrial activities consist of annealing, brazing, burning, hardening, heat treating, abrasive blasting, and plating of metal parts. The Facility is categorized under Standard Industrial Classification ("SIC") Code 3398 – Metal Heat Treating;

**WHEREAS**, storm water discharges associated with industrial activity at the Facility are regulated by the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order 2014-0057-DWQ, as amended by Order Nos. 2015-0122-DWQ and 2018-0028-DWQ (“General Permit” or “Permit”)<sup>1</sup>, and the

<sup>1</sup> Any reference to the “General Permit” or “Permit” shall be to the then-effective version, regardless of whether such changes are the result of amendments, revisions, reissuance, or similar modification of material terms. Any reference in this Consent Decree to specific sections or subsections of the General Permit that are moved, modified, or otherwise changed in a subsequent version of the General Permit shall be to such subsequent reference(s) as if set forth herein, *e.g.*, the current §XI.B.6.c may be renumbered as §XI.B.7.c, combined into the current §XI.B.6.d, or split into a new §XI.B.6.c and §XI.B.6.d.

1 Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq. (“Clean Water  
2 Act” or “CWA”), Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342;

3       **WHEREAS**, Defendant’s operations at the Facility have resulted in  
4 discharges of pollutants into waters of the United States and are subject to  
5 regulation by the Clean Water Act Sections 301(a) and 402. 33 U.S.C. §§ 1311(a),  
6 1342;

7       **WHEREAS**, on July 18, 2023, Plaintiff issued a notice of intent to file suit  
8 (“60-Day Notice Letter”) to Defendant, its registered agent, the Administrator of  
9 the United States Environmental Protection Agency (“EPA”), the Executive  
10 Director of the State Water Resources Control Board (“State Board”), the  
11 Executive Director Los Angeles Regional Water Quality Control Board  
12 (“Regional Board”), and the Regional Administrator of EPA Region IX, alleging  
13 violations of the Clean Water Act and the General Permit Water Quality Order  
14 2014-0057-DWQ, as amended by Order Nos. 2015-0122-DWQ and 2018-0028-  
15 DWQ incorporating: 1) Federal Sufficiently Sensitive Test Method Ruling; 2)  
16 Total Maximum Daily Load Implementation Requirements; and 3) Statewide  
17 Compliance Options Incentivizing On-Site or Regional Storm Water Capture and  
18 Use, at the Facility;

19       **WHEREAS**, on September 20, 2023, LA Waterkeeper filed a complaint  
20 against Defendant in the Central District of California (“Court”), Civil Case No.  
21 2:23-cv-07863 (“Complaint”);

22       **WHEREAS**, Plaintiff’s Complaint alleged violations of the General Permit  
23 and the Clean Water Act for Defendant’s discharges of pollutants into storm  
24 drains and surface waters, including the Los Angeles River, Los Angeles River  
25

1 Estuary, Queensway Bay, San Pedro Bay, and Pacific Ocean (collectively,  
2 “Receiving Waters”);  
3

4 **WHEREAS**, Plaintiff and Defendant (collectively, “Settling Parties” or  
5 “Parties”) agree that it is in their mutual interest to enter into a Consent Decree  
6 setting forth terms and conditions appropriate to resolving the allegations set forth  
7 in the 60-Day Notice Letter and Complaint without further proceedings;  
8

9 **WHEREAS**, all actions taken by Defendant pursuant to this Consent  
10 Decree shall be made in compliance with all applicable federal, state and local  
laws, rules and regulations.

11 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**  
12 **SETTLING PARTIES (SOLELY FOR PURPOSES OF RESOLVING**  
13 **THEIR DISPUTE THROUGH THIS CONSENT DECREE) AND IT IS**  
14 **ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

15 1. For the purposes of this Consent Decree, the Court has jurisdiction  
16 over the subject matter of this action pursuant to Section 505(a)(1)(A) of the  
17 CWA, 33 U.S.C. § 1365(a)(1)(A).

18 2. For the purposes of this Consent Decree, venue is appropriate in the  
19 Central District Court pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. §  
20 1365(c)(1), because the Facility at which the alleged violations are taking place is  
21 located within this District.

22 3. For purposes of the Consent Decree, Defendant does not challenge  
23 that the Complaint states a claim upon which relief may be granted against  
24 Defendant pursuant to Section 505 of the CWA, 33 U.S.C. § 1365.

25 4. For the purposes of this Consent Decree, LA Waterkeeper has  
26 standing to bring this action.  
27

1       5. The Court shall retain jurisdiction over this action for purposes of  
2 interpreting, modifying, or enforcing the terms of this Consent Decree, or as long  
3 thereafter as necessary for the Court to resolve any motion to enforce this Consent  
4 Decree, but only regarding issues raised within the Term (as defined below) of  
5 this Consent Decree.

6 **I. OBJECTIVES**

7       6. It is the express purpose of the Settling Parties through this Consent  
8 Decree to further the objectives of the Clean Water Act, and to resolve all issues  
9 alleged by LA Waterkeeper in its 60-Day Notice and Complaint.

10      7. In light of these objectives and as set forth fully below, Defendant  
11 agrees to comply with the provisions of this Consent Decree.

12 **II. AGENCY REVIEW AND DEFINITIONS**

13      **A. Agency Review of Consent Decree**

14      8. Agency Review. Plaintiff shall submit this Consent Decree to the  
15 United States Department of Justice and the EPA (the “Federal Agencies”), within  
16 three (3) business days of the final signature of the Parties, for agency review  
17 consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five  
18 (45) calendar days after receipt by the Federal Agencies, as evidenced by certified  
19 return receipts, copies of which shall be provided to Defendant, or upon the date  
20 that the Federal Agencies provide a no objection letter, whichever is earlier  
21 (“Agency Review Period”). In the event that the Federal Agencies object to the  
22 entry of this Consent Decree or to any portion of this Consent Decree, the Parties  
23 agree to meet and confer to attempt to resolve the issue(s) raised by the Federal  
24 Agencies. If the Parties are unable to resolve any issue(s) raised by the Federal  
25 Agencies in their comments, the Parties agree to expeditiously seek a settlement  
26  
27

1 conference with the assigned Magistrate Judge to resolve any issue(s). If either  
2 Party chooses not to address the issues raised, the Consent Decree will be entered  
3 if that Party so requests that the Court do so.  
4

5       9. Court Notice. Plaintiff shall notify the Court of the receipt date by the  
6 Federal Agencies, as required by 40 C.F.R. § 135.5, in order to coordinate the  
7 Court's calendar with the Agency Review Period.  
8

9       10. Entry of Consent Decree. Following expiration of the Agency  
10 Review Period, subject to Paragraph 8, Plaintiff shall submit the Consent Decree  
to the Court for entry.  
11

## **B. Definitions**

12       11. Unless otherwise expressly defined herein, terms used in this Consent  
13 Decree which are defined in the CWA or in regulations or rules promulgated  
14 under the CWA have the meaning assigned to them in the statutes or regulations  
15 or rules. Whenever terms listed below are used in this Consent Decree, whether or  
16 not capitalized, the following definitions apply:  
17

- 18       a. “BAT” means the Best Available Technology Economically  
Achievable.  
19       b. “BCT” means the Best Conventional Pollutant Control  
Technology, and collectively with BAT is referred to herein as  
“BAT/BCT.”  
20       c. “BMPs” means Best Management Practices as defined in  
Attachment C (Glossary) of the General Permit.  
21       d. “Consent Decree” means this Consent Decree and any  
attachments or documents incorporated by reference.  
22  
23  
24  
25  
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28

- 1 e. “Day” means a calendar day. In computing any period of time  
2 under this Consent Decree, where the last day of such period is  
3 a Saturday, Sunday, or Federal or State Holiday, the period  
4 runs until the close of business on the next day that is not a  
5 Saturday, Sunday, or Federal or State Holiday.
- 6 f. “Design Storm” means the volume and flow rate of runoff  
7 produced from an 85th percentile, 24-hour storm event as  
8 defined in General Permit Section X.H.6.
- 9 g. “Discharge Point” means each discharge location designated in  
10 the then-current SWPPP for the Facility.
- 11 h. “Effective Date” means the Effective Date of this Consent  
12 Decree, which shall be the later of: (i) the date of full  
13 execution by the Parties; and (ii) the date of full execution by  
14 the Parties of the Consent Decree relating to Defendant’s  
15 facility at 2900 S. Sunol Dr., Vernon, California 90058  
16 (“Vernon Facility”).
- 17 i. “Entry Date” means the later of: (i) the day this Consent  
18 Decree is approved and entered by the Court; and (ii) the day  
19 the Consent Decree relating to Defendant’s Vernon Facility is  
20 approved and entered by the Court.
- 21 j. “Forecasted Rain Event” means a forecasted rain event with a  
22 chance of precipitation that is fifty percent (50%) or more as  
23 determined by the National Oceanic and Atmospheric

Administration (<http://forecast.weather.gov/>) for “90255, Maywood, CA, USA”<sup>2</sup>.

- k. “MIP” means a Monitoring Implementation Plan.
  - l. “PPT” means Pollution Prevention Team.
  - m. “Qualified Industrial Storm Water Practitioner” or “QISP” shall have the definition set forth in Section IX.A.1 of the General Permit.
  - n. “Qualifying Storm Event” or “QSE” shall have the definition set forth in Section XI.B.1 of the General Permit.
  - o. “Reporting Year” means the period from July 1 of a given calendar year to June 30 of the following calendar year.
  - p. “SMARTS” means the California State Water Resources Control Board’s Stormwater Multiple Application and Report Tracking System.
  - q. “SWPPP” means a Storm Water Pollution Prevention Plan.
  - r. “Term” means the period between the “Effective Date” and the “Termination Date.”
  - s. “Termination Date” means the latest of:
    - i. June 30, 2026, if sampling results for storm water samples collected from the Facility do not demonstrate an “Advanced Treatment Exceedance” (as defined below) for copper in either the 2024-2025 or 2025-2026 Reporting Years;

<sup>2</sup> Available at <https://forecast.weather.gov/MapClick.php?lat=33.988861&lon=-118.2024524999999>.

- ii. June 30 following two (2) years after the latest of any advanced treatment system is fully installed, operational, and optimized, if installation of one or more such systems becomes required pursuant to the Consent Decree in Paragraph 26 below;
  - iii. seven (7) days from the conclusion of any proceeding or process to enforce the Consent Decree initiated prior to the dates set forth in Paragraphs 11.s.i.-11.s.ii above; or
  - iv. seven (7) days from Defendant's completion of all payments and other requirements of this Consent Decree.
  - v. Notwithstanding sections 11.s.i-11.s.iv above, if the Regional Board approves a Notice of Termination submitted for the Facility pursuant to Section II.C of the General Permit and Section II.A.6 of the General Permit Fact Sheet, the Termination Date shall be the later of:
    - (1) the date that Defendant notifies LA Waterkeeper of the Regional Board's Approval of the Notice of Termination for the Facility, or (2) seven (7) calendar days from Bodycote's completion of all payments required by this Settlement Agreement.

### III. COMMITMENTS OF THE SETTLING PARTIES

## A. Storm Water Pollution Control Best Management Practices

1       12. Non-Storm Water Discharge Prohibition. Any unauthorized non-  
2 storm water discharge, as defined in the General Permit, shall be subject to the  
3 Action Plan requirements set forth in Paragraph 24 below.  
4

5       13. Rain Gauge/Sensor. Defendant shall install and maintain an  
6 electronic rain gauge or sensor at the Facility within thirty (30) days of the  
7 Effective Date. The rain gauge/sensor shall be capable of measuring precipitation  
8 down to at least 0.1 inches, and record start/stop times and non-cumulative  
9 precipitation for each rain event. During the Term, Defendant shall collect data  
10 using the gauge/sensor for all precipitation events to the nearest 0.1 inch,  
11 including start/stop times. Data from the rain gauge/sensor shall be conclusive of  
12 precipitation quantities and timing for purposes of this Consent Decree.

13       14. Current and Additional Best Management Practices. At all times,  
14 Defendant shall implement BMPs identified in its SWPPP and BMPs described  
15 herein, and shall develop and implement additional BMPs as necessary to comply  
16 with the provisions of this Consent Decree and the General Permit.

17       15. Structural and Non-Structural BMPs for the Facility.

- 18           a. Within forty-five (45) days of the Effective Date, Defendant  
19              shall develop and implement the following BMPs at the  
20              Facility:
- 21              i. Patch, pave, or otherwise resurface areas of degraded  
22                 pavement or asphalt in the areas identified as Drainage  
23                 Area DA1 and DA2 on the Site Map attached to the  
24                 current SWPPP for the Facility;
- 25              ii. Install permanent concrete berms, curbs, or similarly  
26                 effective physical barriers that prevent storm water

1                   discharges from any point other than Discharge Points,  
2                   including without limitation along the perimeter of the  
3                   Facility on Bissell Place;

- 4                   iii. Improve or install Exposure Minimization BMPS (as  
5                   described in Section X.H.2 of the General Permit), such  
6                   as permanent or temporary shelters that prevent the  
7                   contact of storm water with industrial materials stored in  
8                   outdoor storage areas including:  
9  
10                  1. All Hazardous Waste Storage Areas at the  
11                   Facility; and  
12                  2. All storage areas at the Facility;  
13  
14                  iv. Conduct daily sweeping of all paved industrial areas of  
15                   the Facility using a Factory Cat XR 40 inch ride  
16                   scrubber (or equivalent) mechanical sweeper;  
17  
18                  v. Implement supplemental aerial emissions controls for  
19                   blasting activities and equip vents with filters capable of  
20                   trapping fine particulates;  
21  
22                  vi. Replace the wattles/filters/socks when degraded or  
23                   ineffective, including without limitation when there are  
24                   rips, tears or other visual damage;  
25  
26                  vii. Institute a formal pre-rain protocol throughout the Wet  
27                   Season to be implemented within twenty-four (24) hours  
28                   prior to a Forecasted Rain Event, involving inspection of  
                     any filters and wattles deployed at the site, relocation or  
                     covering of any exposed waste material, and relocation

1 under cover of uncontaminated or uncovered debris bins and  
2 trash cans under cover;

3 viii. Inspect hazardous material and waste storage areas  
4 before a Forecasted Rain Event for proper  
5 implementation and maintenance of control measures  
6 and containment integrity;

7 ix. Inspect operations before a Forecasted Rain Event to  
8 ensure adequate implementation and maintenance of  
9 operational procedures and control measures;

10 x. Institute an equipment and vehicle maintenance program  
11 that ensures:

12 1. Upgrade forklift tires for forklifts that are used  
13 outdoors with zinc-free tires or other durable  
14 alternatives that minimize the release of dust, to  
15 the extent such tires are available for a given  
16 forklift;

17 2. No maintenance activities occur outdoors, unless  
18 such maintenance is required for safe operation of  
19 the Facility, e.g., the forklift breaks down in a  
20 location that prevents ingress/egress;

21 3. maintenance activities occur only in designated  
22 work areas or beneath covered maintenance areas;  
23 and

24 4. when maintenance activities must be performed  
25 outdoors, action shall be taken to immediately

contain, capture, and clean up any discharge or spills of waste fluids to the ground;

- xi. Inspect all outdoor drains monthly to ensure they are free of clogs and operating as intended;
  - xii. Maintain spill clean-up supplies at all fluid storage, hydraulic press and maintenance areas; and
  - xiii. Ensure that uncovered drip pans and waste containers that are not under cover are covered or transferred to proper containers as soon as practical, but at the latest by the end of the workday.
  - xiv. Within ten (10) days of BMPs in Paragraphs 15.a.i, 15.a.ii, 15.a.v, and 15.a.x.1 above being initially implemented, Defendant shall confirm to LA Waterkeeper in writing, with representative photographs, that such BMP has been implemented as set forth above.

## B. Sampling at the Facility

16. Defendant shall develop a monitoring program consistent with the General Permit. During the Term, Defendant shall collect samples of storm water discharge from each Discharge Point from at least four (4) Qualifying Storm Events during each Reporting Year, to the extent there are that many, including, at minimum, the first two (2) Qualifying Storm Events during the first half of the Reporting Year, to the extent there are that many, and the first two (2) Qualifying Storm Events during the second half of the Reporting Year, to the extent there are that many. Such sampling shall take place as soon as practicable within the four

(4) hour period required by the General Permit § XI.B.5. If Defendant is unable to collect a required sample under this Consent Decree at a discharge point because there is no discharge at that discharge point, then Defendant shall document the inability to sample by taking photographs during a rain event that is reasonably likely to lead to a discharge of that discharge point. Defendant shall submit such photographs to LA Waterkeeper by email, along with rain gauge/sensor data for the date of such rain event, within fifteen (15) days of a written request for such records by LA Waterkeeper.

17. Sampling Parameters. Except as set forth in Paragraph 18, all samples collected pursuant to this Consent Decree shall be analyzed, at minimum, for the parameters listed in Table 1. Should Defendant conduct sampling for any additional parameters that are listed in 40 C.F.R. § 131.38 and/or in the General Permit as a result of changed operations, a revised pollutant source assessment, or a new mandate from a regulatory agency, such parameter shall be incorporated into this Consent Decree as if listed in Table 1 and shall be subject to the Action Plan requirements (as defined below). Defendant shall immediately notify LA Waterkeeper of its intent to conduct sampling for any such additional parameters and the Parties shall meet and confer regarding the applicable Table 1 limit for such purposes within ten (10) days of such notification.

18. Sampling for Zinc. If during the 2024-2025 Reporting Year, Defendant has implemented the BMP described in Paragraph 15.a.viii.1 above, Defendant may cease sampling for zinc under this Consent Decree.

19. Laboratory and Holding Time. Except for pH samples, Defendant shall deliver all samples to a California-certified environmental laboratory for analysis within allowable hold times, pursuant to 40 C.F.R. Part 136. Analysis of

1 pH will be completed onsite using a portable instrument that is calibrated and used  
2 according to the manufacturer's instructions.

3       20. Detection Limit. Defendant shall request that the laboratory use  
4 analytical methods adequate to detect the individual pollutants at or below the  
5 values specified in the General Permit and Table 1 below.

6       21. Reporting. Defendant shall provide complete laboratory results of all  
7 discharge samples collected at the Facility to LA Waterkeeper within five (5) days  
8 of receiving the complete laboratory report with the results, and shall submit such  
9 results to SMARTS as required by the General Permit.

10           **C. Reduction of Pollutants in Discharges**

11       22. Table 1 Numeric Limits. Within forty-five (45) days of the Effective  
12 Date, for the Term of this Consent Decree, Defendant shall sample for the  
13 following constituents in accordance with Paragraphs 17 and 18 above:

14           TABLE 1<sup>3</sup>

Parameter	Numeric Limit	Source of Limit
Oil & Grease	15 mg/L (instantaneous) 25 mg/L (annual)	Permit NAL
pH	6.5 – 8.5 s.u. (instantaneous)	Basin Plan
Total Suspended Solids (TSS)	100 mg/L (instantaneous) 400 mg/L (annual)	Permit NAL

25       <sup>3</sup> The numeric limits listed in Table 1 are for reference only, and the Table 1 limit for each listed parameter shall  
26 be the then-effective limit provided by the applicable source, e.g., if the NAL for iron is either increased to 1.1  
27 mg/L or decreased to 0.90 mg/L, such new NAL, and not 1.0 mg/L, shall be used as the Table 1 limit for the  
purposes of this Consent Decree as if set forth herein. If the source of a limit in Table 1 is revised to no longer  
provide a limit for a given parameter, e.g., the NAL for iron being removed, then the applicable limit will be the  
current limit in place.

1 Zinc	0.159 mg/L (instantaneous) 0.26 mg/L (annual)	Permit NEL/Permit NAL
2 Aluminum	0.75 mg/L (annual)	Permit NAL
3 Copper	0.06749 mg/L (instantaneous) 0.0332 mg/L (annual)	Permit NEL/Permit NAL
4 Iron	1.0 mg/L (annual)	Permit NAL
5 Nitrate Plus Nitrite (as N)	0.68 mg/L (annual)	Permit NAL
6 Lead	0.094 mg/L (instantaneous) 0.262 mg/L (annual)	Permit NEL/Permit NAL
7 Ammonia	8.7 mg/L (instantaneous) 2.14 mg/L (annual)	Permit NEL/Permit NAL
8 Cadmium	0.0031 mg/L (instantaneous) 0.0053 mg/L (annual)	Permit NEL/Permit NAL
9 Chemical Oxygen Demand	120 mg/L (annual)	Permit NAL
10 Magnesium	0.064 mg/L (annual)	Permit NAL
11 Cyanide	0.022 mg/L (annual)	Permit NAL

23. Stormwater Discharge Action Plan Trigger. A “Stormwater  
24 Discharge Action Plan Trigger” is defined as any of the following:  
25 a. Where the sampling result or results would have an average  
26 from a sampling point for a given pollutant that in a Reporting  
27

1           exceeds the annual Numeric Limit specified in Table 1 had the  
2           pollutant been sampled four (4) times, regardless of how many  
3           times the pollutant had been sampled;<sup>4</sup>

- 4           b. If any pollutant is sampled fewer than four (4) times from any  
5           sampling point in a Reporting Year, and there was otherwise  
6           no Stormwater Discharge Action Plan Trigger for that  
7           pollutant at that sampling point pursuant to Paragraph 23.a  
8           above, then where the average concentration of that pollutant  
9           from all storm water samples from that sampling point during  
10          that Reporting Year exceeds the applicable annual Numeric  
11          Limit specified in Table 1;<sup>5</sup> or  
12  
13          c. Where the concentration of any pollutant in any two (2) storm  
14          water samples collected from that sample point in a Reporting  
15          Year exceeds any instantaneous numeric limit contained in  
16          Table 1.

17          24. Action Plan. As of the expiration of the Agency Review Period, and  
18          for the remainder of the Term, Defendant shall submit an Action Plan as follows:

- 19           (a) if an unauthorized non-storm water discharge described in Paragraph 12  
20          occurs, Defendant shall prepare and submit to LA Waterkeeper an Action  
21          Plan for avoiding unauthorized non-storm water discharges;

22  
23  
24          <sup>4</sup> E.g., there is a “Stormwater Discharge Action Plan Trigger” if the total concentrations for a given sample point  
25          exceed the limit when divided by four, regardless of how many samples have been taken. For example, if a sample  
26          from sampling point #1 during the first QSE of a Reporting Year has a concentration for iron of 5 mg/L, then the  
27          lowest possible an average of four could be is 1.25 mg/L, which exceeds the 1 mg/L identified in Table 1. So a  
28          Stormwater Discharge Action Plan Trigger will have occurred after the first sample is taken from that sample  
              point.

<sup>5</sup> In other words, if there are fewer than 4 QSEs in a given year, the collective number of samples are divided by  
              the number of samples taken, and not four, in determining if there is a Stormwater Discharge Action Plan Trigger.

(b) if storm water samples demonstrate a Stormwater Discharge Action Plan Trigger as defined above,<sup>6</sup> Defendant shall prepare and submit to LA Waterkeeper an Action Plan to avoid a future Exceedance; or

(c) if after an advanced treatment system is installed, if ever, Defendant has a bypass other than in a Design Storm, Defendant shall prepare and submit to LA Waterkeeper an Action Plan for avoiding a future bypass in smaller than a Design Storm.

(d) However, an Action Plan shall not be required when the BMPs for the applicable unauthorized non-storm water discharge, discharge in smaller than a Design Storm, or a Stormwater Discharge Action Plain Trigger for the same pollutant in the same drainage area were addressed in a previous Action Plan in the same Reporting Year and such BMPs were not yet implemented as of the date of the applicable unauthorized non-storm water discharge, discharge in smaller than a Design Storm, or QSE sampling that led to the Stormwater Discharge Action Plan Trigger.<sup>7</sup> The complete Action Plan shall be submitted to LA Waterkeeper within thirty (30) days of the unauthorized non-storm water discharge, the discharge of untreated storm water in smaller than a Design Storm, or the receipt of the laboratory report demonstrating the Exceedance, as applicable.

a. Action Plan Requirements. Each complete Action Plan submitted shall include at a minimum: (1) the identification of

<sup>6</sup> Except that no Action Plan will be required for zinc based on samples taken during the 2024-2025 Reporting Year.

<sup>7</sup> For clarity, an Action Plan based on an Exceedance shall be required if: (i) the applicable Exceedance is demonstrated for a pollutant and/or in a drainage area not addressed in a previous Action Plan in the same Reporting Year; and/or (2) when the applicable Exceedance is demonstrated for the same pollutant in the same drainage area as in a previous Action Plan in the same Reporting Year and the BMPs in the previous Action Plan were fully implemented before the applicable QSE that led to the Exceedance was sampled.

the contaminant(s) discharged in excess of the numeric limit(s) and/or the applicable unauthorized non-storm water discharge or the applicable discharge of untreated storm water in smaller than a Design Storm; (2) an assessment of the source of each contaminant exceedance and/or applicable unauthorized non-storm water discharge or the applicable discharge of untreated storm water in smaller than Design Storm; (3) the identification of additional BMPs that shall be implemented in an effort to achieve compliance with the numeric limit(s) and/or prevent future unauthorized non-storm water discharges or discharge of untreated storm water in smaller than Design Storm; and (4) time schedules for implementation of the proposed BMPs. The time schedule(s) for implementation shall ensure that all BMPs are implemented as soon as possible, but in no event later than ninety (90) days following the submission of the Action Plan, unless a later implementation date is mutually agreed upon by the Settling Parties. Within seven (7) days of each of the BMPs set forth in the Action Plan being implemented, Defendant shall confirm to LA Waterkeeper in writing, with photographs, that such BMP has been implemented as set forth in the Action Plan.

b. Action Plan Proposed BMPs. The following BMPs are not required to be included but should generally be evaluated for inclusion in Action Plans:

- 1                   i. Hydrologic Controls. Installation of additional berms or  
2                   equivalent structural controls necessary to reduce or  
3                   prevent storm water from flowing off site other than  
4                   through any engineered storm water conveyance system  
5                   or storm water retention or treatment facilities installed  
6                   under this Consent Decree.  
7                   ii. Sweeping. The increased/more frequent use of sweepers  
8                   and manual sweeping in otherwise inaccessible areas.  
9                   iii. Treatment Systems. If a treatment system has been  
10                  installed under this Consent Decree, installing additional  
11                  components or systems, or otherwise improving, an  
12                  advanced storm water treatment system, or making  
13                  changes to the operation and maintenance protocols for  
14                  such system, to provide more effective filtration  
15                  treatment of storm water prior to discharge.  
16                  iv. Evaluation of Existing BMPs. Replacing, rehabilitating,  
17                  or eliminating existing BMPs, taking into account the  
18                  age of the BMPs involved or employed, the engineering  
19                  aspect of the application of various BMPs, and any  
20                  adverse environmental impact of the BMPs.

- 22                  c. Action Plan Review. LA Waterkeeper shall have thirty (30)  
23                  days upon receipt of Defendant's complete Action Plan to  
24                  provide Defendant with comments. Within thirty (30) days of  
25                  receiving LA Waterkeeper's proposed revisions to an Action  
26                  Plan, Defendant shall consider each of LA Waterkeeper's  
27  
28

1 recommended revisions and accept them or justify in writing  
2 why any comment is not incorporated. Action Plan(s)  
3 developed and implemented pursuant to this Consent Decree  
4 are an obligation of this Consent Decree. Any disputes as to  
5 the adequacy of the action plan shall be resolved pursuant to  
6 the dispute resolution provisions of this Consent Decree, set  
7 out in Section IV below. Disputes regarding the adequacy of a  
8 particular BMP shall not impact the schedule for implementing  
9 any other BMP set forth in the Action Plan.

- 10
- 11 d. Defendant shall revise the then-current SWPPP to reflect the  
12 changes required by the Action Plan, as set forth in Paragraph  
13 31.b.i. below. Additionally, if the then-current SWPPP states  
14 that the pollutant(s) that were the subject of the Action Plan are  
15 not exposed to storm water, then, unless Action Plan is not a  
16 result of exposure of such pollutant(s) to storm water, to the  
17 extent required by the General Permit, Defendant shall revise  
18 the SWPPP to state that there is exposure.
- 19 e. Action Plan Payments. Defendant shall pay Three Thousand  
20 Dollars (\$3,000.00) each time an Action Plan is submitted to  
21 LA Waterkeeper prior to Defendant installing an advanced  
22 treatment system for the applicable Drainage Area, if ever,  
23 unless such Action Plan proposes as a BMP installing an  
24 advanced treatment system for such Drainage Area. Defendant  
25 shall pay Five Thousand Dollars (\$5,000.00) each time an  
26 Action Plan is submitted to LA Waterkeeper proposes

installing an advanced treatment system for such Drainage Area, and after Defendant installs and operates a separate advanced treatment system for such Drainage Areas, if ever. Payments are due at the same time that the applicable Action Plan is submitted and shall be made to “Los Angeles Waterkeeper” via certified mail, return receipt requested to: Los Angeles Waterkeeper, c/o Barak Kamelgard, 360 E 2nd Street Suite 250, Los Angeles, CA 90012. Failure to submit a payment as required under this paragraph will constitute a breach of the Consent Decree.

25. Advanced Treatment System Exceedance. An “Advanced Treatment System Exceedance” is defined as (a) instantaneous NEL exceedances as defined in the General Permit for copper at a given sampling point or (b) an annual NAL exceedance as defined in the General Permit for copper at a given sampling point based on no more than the first four (4) QSEs in that Reporting Year.

26. Advanced Treatment System. Unless this Consent Decree has been terminated pursuant to Paragraph 11.s.vi above prior to the applicable dates below, Defendant shall develop, install, and operate one or more advanced treatment systems sufficient to capture and treat storm water for, at minimum, copper, consistent with the Design Storm standard to treat stormwater for, at a minimum, any drainage area that has had an “Advanced Treatment Exceedance” (as defined above) by (a) the later of seven (7) months from Defendant’s receipt of the laboratory report demonstrating an Advanced Treatment System Exceedance or December 1, 2025, for any drainage areas from which sampling results for storm water samples collected from the applicable sampling point(s) demonstrate

1 an Advanced Treatment System Exceedance for copper in the 2024-2025  
2 Reporting Year, if any; and (b) the later of seven (7) months from Defendant's  
3 receipt of the laboratory report demonstrating the Advanced Treatment System  
4 Exceedance or September 1, 2026, for any drainage areas from which sampling  
5 results for storm water samples collected from the applicable sampling point(s)  
6 demonstrate an Advanced Treatment System Exceedance for copper in the 2025-  
7 2026 Reporting Year, if any. The Parties agree that these deadlines may be  
8 extended by agreement as a result of operational changes at the Facility, which  
9 agreement will not be unreasonably withheld or require court approval. Such  
10 system(s) shall capture and treat storm water, at minimum, from the drainage area  
11 or drainage areas for which a Stormwater Discharge Action Plan Trigger was  
12 demonstrated, provided that Defendant may voluntarily elect to capture and treat  
13 storm water from other drainage areas.

- 15       a. Within seven (7) days of the installation of the advanced  
16            treatment system being completed and the advanced treatment  
17            system being fully operational and optimized, Defendant shall  
18            confirm to LA Waterkeeper in writing certified by a QISP,  
19            with photographs, that installation of the system has been  
20            completed and that the system is fully operational and  
21            optimized.
- 22        b. Notwithstanding the foregoing, Defendant may elect to install  
23            such an advanced treatment system at any point for any  
24            pollutant as a result of an Action Plan, as set forth in Paragraph  
25            24.b.iii above.

1           **D. Visual Observations**

2       27. Storm Water Discharge Observations. During the Term,  
3 appropriately trained staff of Defendant shall conduct visual observations during  
4 the Facility's operating hours as required by Section XI.A.2 of the General Permit,  
5 and any successor thereof.

6       28. Non-Storm Water Discharge Observations. During the Term,  
7 appropriately trained staff of Defendant shall conduct monthly non-storm water  
8 visual observations of the Facility that comply with all requirements of Section  
9 XI.A.1 of the General Permit, and any successor thereof.

10      29. Visual Observations Records. Defendant shall maintain observation  
11 records as required by XI.A.3 of the General Permit, as well as representative  
12 photographs. Defendant shall provide LA Waterkeeper with a copy of those  
13 records and photographs within fourteen (14) days of receipt of a written request  
14 from LA Waterkeeper for those records. Defendant shall not be required to  
15 photograph anything it deems confidential business information and LA  
16 Waterkeeper shall not use the records for any purpose other than as a confidential  
17 and informational communication, or a necessary as evidence in any dispute  
18 resolution proceeding.

19      30. Employee Training Program. Within forty-five (45) days of the  
20 Effective Date, Defendant shall develop and implement an employee training  
21 program that meets the following requirements:(1) that there are employees at the  
22 Facility designated to achieve compliance with the Industrial General Permit and  
23 this Consent Decree (“Designated Employees”), and (2) that these Designated  
24 Employees are trained to perform the activities required by the Industrial General  
25 Permit and this Consent Decree (“Training Program”):

- 1       a. Materials. Training materials should include, at minimum, a  
2           detailed Training Manual or Standard Operating Procedure,  
3           including drawings and diagrams where appropriate, for  
4           reference and use by Defendant's personnel to ensure effective  
5           implementation of all BMPs at the Facility;
- 6       b. Language. The training and training materials shall be  
7           available and offered in the language(s) in which relevant  
8           employees are fluent. If necessary, Defendant shall provide a  
9           translator or translators at all trainings where such translation  
10          is likely to improve staff comprehension of the Training  
11          Program and improve compliance with this Consent Decree  
12          and the Industrial General Permit;
- 13      c. Training Frequency. Training shall be provided by a Qualified  
14           Industrial Storm Water Practitioner ("QISP", as defined in  
15           Section IX.A of the 2015 Permit) familiar with the  
16           requirements of this Consent Decree and the Industrial General  
17           Permit, and shall be repeated as necessary to ensure that  
18           Designated Employees are familiar with the requirements of  
19           this Consent Decree, the Permit, and the Facility's SWPPP.  
20           All new Designated Employees shall receive this training  
21           before assuming responsibilities for implementing the SWPPP;
- 22      d. Operational Procedures and Control Measures Training.  
23           Defendant shall train all Designated Employees at the Facility  
24           on to meet the requirements of Paragraph 29.a;

- 1       e. Hazardous Materials and Waste Training. Defendant shall train  
2           all Designated Employees at the Facility on appropriate  
3           hazardous materials use and hazardous waste control and  
4           disposal procedures;
- 5       f. Sampling Training. Defendant shall train Designated  
6           Employees at the Facility that conduct sampling on all proper  
7           sampling procedures required by the General Permit and this  
8           Consent Decree to ensure all samples are properly collected,  
9           stored, and submitted to a certified laboratory;
- 10      g. Visual Observation Training. Defendant shall provide training  
11           on how and when to properly conduct visual observations to  
12           Designated Employees;
- 13      h. Non-Storm Water Discharge Training. Defendant shall train  
14           all Designated Employees at the Facility on the Industrial  
15           General Permit's prohibition of non-storm water discharges, so  
16           that Designated Employees know what non-storm water  
17           discharges are and how to detect and prevent non-storm water  
18           discharges;
- 19      i. Employees. All Designated Employees at the Facility shall  
20           participate in the Training Program annually. New Designated  
21           Employees shall participate in the Training Program within  
22           thirty (30) days of their hiring date;
- 23      j. Records. The Defendant shall maintain training records to  
24           document compliance with this Paragraph, and shall provide

1 LA Waterkeeper with a copy of these records within fourteen  
2 (14) days of receipt of a written request.

3 31. SWPPP Revisions.

- 4 a. Initial SWPPP Revisions. To the extent not already  
5 incorporated, and to the extent necessary, Defendant shall  
6 amend the Facility's SWPPP to incorporate the requirements in  
7 this Consent Decree and comply with the General Permit and  
8 submit the complete, updated SWPPP to LA Waterkeeper  
9 within thirty (30) days of the Effective Date for LA  
10 Waterkeeper's review and comment. The complete, updated  
11 SWPPP shall contain, at a minimum, the following elements:  
12  
13 i. A pollutant source assessment, including all elements  
14 required by section X.G of the General Permit;  
15 ii. A detailed narrative description and assessment of each  
16 industrial activity with the potential to impact storm  
17 water quality occurring at the Facility as required by  
18 section X.G of the General Permit;  
19 iii. Descriptions of all BMPs in accordance with section  
20 X.H.4 of the General Permit, including without  
21 limitation BMPs required by this Consent Decree;  
22 iv. A set of site maps that comply with section X.E of the  
23 General Permit and provisions of this Consent Decree,  
24 including accurately depicting the different drainage  
25 areas and flows;

- v. A MIP as required by sections XI and X.I of the General Permit;
- vi. A designation (by position/title) of employees responsible for carrying out storm water management, monitoring, sampling, and SWPPP implementation, e.g., visual inspection of each specific area, monitoring each specific BMP, and sampling; and
- vii. A Training Program as described above in Paragraph 30.

10 b. Additional SWPPP Revisions.

- i. Within thirty (30) days after approval of any Action Plan by LA Waterkeeper (or resolution pursuant to Dispute Resolution), Defendant shall revise the then-current SWPPP to reflect the changes required by the Action Plan and submit the complete, updated SWPPP to LA Waterkeeper for LA Waterkeeper's review and comment.
- ii. Within thirty (30) days after any changes in industrial activities, sources of industrial pollutants, changes to Discharge Points, or changes to sections of the SWPPP identified in the SWPPP as requiring a SWPPP revision (including but not limited to, changes in Facility contacts or PPT members, changes or additions of BMPs, or changes in or additions of industrial activities that impact storm water discharge), Defendant shall revise the then-current SWPPP to reflect such changes

1 and submit the complete, updated SWPPP to LA  
2 Waterkeeper for LA Waterkeeper's review and  
3 comment.

- 4 c. Review of SWPPP. For any SWPPP updates pursuant to  
5 Paragraphs 31.a. and 31.b., LA Waterkeeper shall have thirty  
6 (30) days upon receipt of Defendant's complete SWPPP to  
7 provide Defendant with comments. Within thirty (30) days of  
8 receiving LA Waterkeeper's comments and proposed changes  
9 to the SWPPP, Defendant shall consider each of the comments  
10 and proposed changes and either accept them or justify in  
11 writing why a change is not incorporated. The Parties agree to  
12 work in good faith to resolve any disputes with respect to the  
13 SWPPP, and any remaining disputes will be resolved through  
14 timely initiation of the dispute resolution procedures in Section  
15 IV below. Following its incorporation of proposed  
16 modification or additions (if any) into each revised SWPPP,  
17 Defendant shall upload the revised SWPPP to SMARTS.  
18

19 **E. Compliance Monitoring and Reporting**

20 32. Every year during the life of this Consent Decree, LA Waterkeeper  
21 may conduct one annual site inspection ("Site Inspection") for the purpose of  
22 ensuring compliance with this Consent Decree and the Industrial General Permit.  
23 No more than two representatives of LA Waterkeeper may participate in such Site  
24 Inspection. In the event of a dispute regarding Defendant's compliance with this  
25 Consent Decree, and provided a Site Inspection would be relevant to resolving the  
26 Parties' dispute, the Parties agree to meet and confer regarding one additional Site  
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1 Inspection for the term of the Consent Decree at Plaintiff's request. Plaintiff shall  
2 not unreasonably request, and Defendant shall not unreasonably deny, such Site  
3 Inspection. Any Site Inspection shall occur during normal business hours, and LA  
4 Waterkeeper will provide Defendant with at least twenty-four (24) hours' notice  
5 prior to a wet weather Site Inspection and at least seventy-two (72) hours' notice  
6 prior to a dry weather Site Inspection. For any Site Inspection requested to occur  
7 in wet weather, Plaintiff shall be entitled to adjust timing or reschedule during  
8 normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) in the  
9 event the forecast changes and anticipated precipitation appears unlikely, and thus  
10 frustrates the purpose of visiting the Facility in wet weather. Notice will be  
11 provided by electronic mail to the individual(s) designated below at Paragraph 63.  
12 During the Wet Weather inspection, Plaintiff may request that Defendant collect a  
13 sample of industrial storm water discharge from the Facility's designated  
14 industrial discharge point(s) referenced in its SWPPP, to the extent that such  
15 discharges are occurring. Defendant shall collect the sample and provide a split  
16 sample to LA Waterkeeper. LA Waterkeeper's representative(s) may observe the  
17 split sample(s) being collected by Defendant's representative. LA Waterkeeper  
18 shall be permitted to take photographs or video recordings during any Site  
19 Inspection, provided that LA Waterkeeper shall not be permitted to photograph or  
20 video record anything Defendant deems confidential business information and LA  
21 Waterkeeper shall not use such photographs or video recordings for any purpose  
22 other than as a confidential and informational communication, or a necessary as  
23 evidence in any dispute resolution proceeding. LA Waterkeeper agrees that all  
24 individuals who will participate in a Site Inspection will execute the waiver and  
25 release attached as Exhibit C, prior to the Site Inspection, will abide by all of  
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1 Defendant's safety rules, and will not enter any buildings at the Facility without  
2 Defendant's express permission. LA Waterkeeper expressly recognizes that  
3 Defendant processes ITAR and EAR-regulated parts and components at the  
4 Facility, and that any and all access to the Facility by LA Waterkeeper and/or its  
5 representatives will be limited to those persons who are United States citizens or  
6 are lawful permanent residents of the United States.

7       33. Document Provision. During the Term, Defendant shall notify and  
8 submit documents to LA Waterkeeper as follows:

- 10       a.      Defendant shall copy LA Waterkeeper, by electronic mail to  
11                  the individual(s) designated below at Paragraph 63, on all  
12                  compliance documents, monitoring and/or sampling data,  
13                  written communications and/or correspondences, or any  
14                  documents related to storm water quality at the Facility that are  
15                  submitted to the Regional Board, the State Board, and/or any  
16                  state or local agency, county, municipality.  
17        b.      Any compliance document, inspection report, written  
18                  communication and/or correspondence, or any document  
19                  related to storm water quality at the Facility received by  
20                  Defendant from the Regional Board, the State Board, and/or  
21                  any state or local agency, county, municipality shall be sent to  
22                  LA Waterkeeper within ten (10) business days of receipt by  
23                  Defendant. Defendant shall send electronic copies of  
24                  documents to LA Waterkeeper at the relevant email addresses  
25                  designated below at Paragraph 63.

34. Compliance Monitoring. Defendant agrees to partially defray costs associated with Plaintiff's monitoring of Defendant's compliance with this Consent Decree during the Term by paying five thousand dollars (\$5,000) each year the Consent Decree is in effect. The first payment shall be made within thirty (30) days of the Entry Date, and subsequent payments shall be made by the applicable anniversary for the Effective Date. The payment shall be made via check, made payable to: "Los Angeles Waterkeeper" via certified mail, return receipt requested to Los Angeles Waterkeeper, c/o Barak Kamelgard, 360 E 2nd Street Suite 250, Los Angeles, CA 90012. Failure to submit payment as required under this Paragraph will constitute breach of the Consent Decree.

**F. Environmentally Beneficial Project, Litigation Fees and Costs, Stipulated Penalties, and Interest**

35. Environmentally Beneficial Project. To fund environmentally beneficial project activities that will reduce or mitigate the impacts of storm water pollution from industrial activities occurring in waters tributary to the Los Angeles River, Defendant shall make a payment totaling Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00) to the Trust for Public Land to be used for the Urban Orchard Project, which will create a park and wetlands that will capture and filter stormwater, to improve water quality and fish habitats, made within thirty (30) days of the Entry Date, payable to The Trust for Public Land, Attention Lisa Rossman (Controller, Senior Finance and BI Systems Director), and sent via overnight mail to PO Box 889336, Los Angeles, CA 9008-9336. Failure to submit payment as required under this Paragraph will constitute breach of the Consent Decree.

1       36. LA Waterkeeper's Fees and Costs. Defendant shall pay a total of  
2 Eighty-Seven Thousand Five Hundred Dollars (\$87,500.00) to LA Waterkeeper to  
3 partially reimburse Plaintiff for its investigation fees and costs, expert/consultant  
4 fees and costs, reasonable attorneys' fees, and other costs incurred as a result of  
5 investigating and filing the lawsuit, and negotiating a resolution of this matter.  
6 The payment in full shall be made via check within thirty (30) days of the Entry  
7 Date and made payable to: "Aqua Terra Aeris Law Group" via certified mail,  
8 return receipt requested to Aqua Terra Aeris Law Group, c/o Jason Flanders, 4030  
9 Martin Luther King Jr. Way Oakland, CA 94609. Failure to submit payment as  
10 required under this Paragraph will constitute breach of the Consent Decree.  
11

12       37. Missed Deadlines. In the event that Defendant fails to submit to LA  
13 Waterkeeper any payment, document, report, or communication required by this  
14 Consent Decree, Defendant shall pay a stipulated payment of Five Hundred  
15 Dollars (\$500) per day. Such stipulated payments shall be made by check payable  
16 to: The Trust for Public Land, Attention Lisa Rossman (Controller, Senior  
17 Finance and BI Systems Director), and such funds shall be used for the sole  
18 purpose of funding environmentally beneficial projects, as described in Paragraph  
19 35. Payment shall be sent via overnight mail to PO Box 889336, Los Angeles, CA  
20 9008-9336. Defendant agrees to make the stipulated payment within fourteen (14)  
21 days after the resolution of the event that precipitated the stipulated payment  
22 liability.  
23

24       38. Interest on Late Payments. Defendant shall pay simple interest on  
25 any payments, fees, or costs owed to LA Waterkeeper under this Consent Decree  
26 that LA Waterkeeper has not received by the due date. The interest shall accrue  
27 starting the first day after the payment is due and shall be computed at a rate equal  
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1 to the lower of: (i) 10% per year (0.833% per month); or (ii) the maximum rate  
2 permitted by applicable law, unless Dispute Resolution has been invoked by  
3 Defendant under Section IV below, in which case interest shall not start to accrue  
4 until the conclusion of Dispute Resolution. Interest shall continue to accrue on  
5 any outstanding balance until Defendant is current on all payments then due under  
6 this Consent Decree, and shall be paid at the same time that the payments, fees, or  
7 costs owed are paid to LA Waterkeeper. Interest on late payments shall be paid by  
8 check payable to: The Trust for Public Land, Attention Lisa Rossman (Controller,  
9 Senior Finance and BI Systems Director), and such funds shall be used for the  
10 sole purpose of funding environmentally beneficial projects, as described in  
11 Paragraph 35. Payment shall be sent via overnight mail to PO Box 889336, Los  
12 Angeles, CA 9008-9336.

14 **IV. Dispute Resolution**

15 39. This Court shall retain jurisdiction over this matter for the term of  
16 this Consent Decree for the purposes of enforcing its terms and conditions, and  
17 adjudicating all disputes among the Parties that may arise under the provisions of  
18 this Consent Decree. The Court shall have the power to enforce this Consent  
19 Decree with all available legal and equitable remedies, including contempt.

20 40. Meet and Confer. Either Party to this Consent Decree may invoke the  
21 dispute resolution procedures of this Section IV by notifying the other Party in  
22 writing of the matter(s) in dispute and of the disputing Party's proposal for  
23 resolution within thirty (30) days of when a dispute has arisen. The Parties shall  
24 then meet and confer in good faith (either telephonically or in person) within ten  
25 (10) days of the date of the notice in an attempt to fully resolve the dispute no  
26 later than thirty (30) calendar days from the date of the meet and confer. The

1 Parties may extend any of these deadlines as well as those in Paragraph 41 by  
2 agreement.

3       41. Settlement Conference. If the Parties cannot resolve the dispute  
4 within thirty (30) days of the meet and confer described in Paragraph 40, the  
5 Parties agree that the dispute may be submitted for formal resolution by filing a  
6 motion before the United States District Court for the Central District of  
7 California. The Parties agree to request an expedited hearing schedule on the  
8 motion.

9       42. In resolving any dispute arising from this Consent Decree before the  
10 Court, the Parties shall be entitled to seek fees and costs incurred pursuant to the  
11 provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §  
12 1365(d), and applicable case law interpreting such provisions.

13 **V. Mutual Release of Liability and Covenant Not to Sue**

14       43. Plaintiff's Release. In consideration of the above, upon the Effective  
15 Date of this Consent Decree, LA Waterkeeper on its own behalf and, to the extent  
16 in LA Waterkeeper's control, on behalf of its current officers, directors, members,  
17 employees, predecessors, successors, assigns, agents, attorneys, and other  
18 representatives release Defendant, and each of its current officers, directors,  
19 employees, shareholders, parents, affiliates, agents, attorneys, consultants,  
20 representatives, predecessors, successors, and assigns, from and waives all claims  
21 related to the Facility that were raised or could have been raised in the 60-Day  
22 Notice Letter and/or the Complaint up to and including the Termination Date of  
23 this Consent Decree, including all claims for injunctive relief, penalties, fees  
24 (including without limitation fees of attorneys, experts, and others), liabilities,

1 costs, expenses or any other sum incurred or claimed, except to the extent owed or  
2 required pursuant to this Consent Decree.

3       44. Defendant's Release. In consideration of the above, upon the  
4 Effective Date of this Consent Decree, Defendant, on its own behalf and, to the  
5 extent in Defendant's control, on behalf of its current officers, directors,  
6 employees, agents, attorneys, consultants, representatives, parents, subsidiaries,  
7 predecessors, successors and assigns, and their agents, attorneys, and other  
8 representatives, release LA Waterkeeper (and its current officers , directors,  
9 employees, members, parents, subsidiaries, and affiliates, and each of their  
10 successors and assigns, and its agents, attorneys, and other representatives) from,  
11 and waive, all claims related to the Facility that were raised or could have been  
12 raised in the 60-Notice Letter and/or the Complaint up to and including the  
13 Termination Date of this Consent Decree, including all claims for injunctive  
14 relief, penalties, fees (including without limitation fees of attorneys, experts, and  
15 others), liabilities, costs, expenses or any other sum incurred or claim, occurring  
16 or arising up and including to the Termination Date.

17       45. Waiver of California Civil Code § 1542. Upon the Effective Date of  
18 this Consent Decree, the Parties further expressly waive any rights or benefits  
19 available to them under the provisions of California Civil Code §1542, which  
20 provides as follows:

21                  22 A general release does not extend to claims which the creditor  
23 does not know or suspect to exist in his favor at the time of  
24 executing the release, which if known by him must have  
materially affected his settlement with the debtor.

25       46. Covenant Not to Sue. For the period beginning on the Effective Date  
26 and ending on the Termination Date, Plaintiff agrees that neither it, nor, to the  
27 extent in LA Waterkeeper's control, its current officers, directors, employees,  
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1 members, successors, assigns, agents, attorneys and/or other representatives, will  
2 file any new lawsuit against Defendant related to the claims against the Facility  
3 raised or that could have been raised in the 60-Notice Letter and the Complaint,  
4 and/or the matters addressed by this Consent Decree, excepting only an action to  
5 enforce this Consent Decree.

6       47. Dismissal. Provided that the Court retains jurisdiction over the Civil  
7 Action for the purposes of interpreting, modifying, or enforcing the terms of this  
8 Consent Decree, or as long thereafter as necessary for the Court to resolve any  
9 motion to enforce this Consent Decree, but only issues raised with the Term of the  
10 Consent Decree, as requested in Paragraph 5, Plaintiff shall dismiss the Complaint  
11 in its entirety, with prejudice, immediately after the Court approves and enters this  
12 Consent Decree, pursuant to Federal Rule of Civil Procedure 41(a)(2).

13       48. Nothing in this Consent Decree limits or otherwise affects Plaintiff's  
14 rights to address or take any position that it deems necessary or appropriate in an  
15 informal or formal proceeding before the State Board, Regional Board, EPA, or  
16 any other judicial or administrative body on any matter relating to Defendant's  
17 compliance at the Facility with the General Permit or the Clean Water Act  
18 occurring or arising after the Effective Date.

19       **VI. Miscellaneous Provisions**

20       49. No Admission of Liability. The Parties enter into this Consent  
21 Decree for the purpose of avoiding prolonged and costly litigation. Neither the  
22 Consent Decree nor any payment pursuant to the Consent Decree shall constitute  
23 or be construed as a finding, adjudication, or acknowledgement of any fact, law or  
24 liability, nor shall it be construed as an admission of violation of any law, rule, or  
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1 regulation. The Defendant maintains and reserves all defenses it may have to any  
2 alleged violations that may be raised in the future.

3       50. Counterparts. This Consent Decree may be executed in any number  
4 of counterparts, all of which together shall constitute one original document.  
5 Telecopy and/or facsimile copies of original signature shall be deemed to be  
6 originally executed counterparts of this Consent Decree.

7       51. Authority. The undersigned representatives for Plaintiff and  
8 Defendant each certify that s/he is fully authorized by the Party whom s/he  
9 represents to enter into this Consent Decree. A Party's signature to this Consent  
10 Decree transmitted by facsimile or electronic mail shall be deemed binding.

12       52. Construction. The language in all parts of this Consent Decree shall  
13 be construed according to its plain and ordinary meaning, except as to those terms  
14 defined in the Permit, the Clean Water Act, or specifically herein. The captions  
15 and paragraph headings used in this Consent Decree are for reference only and  
16 shall not affect the construction of this Consent Decree.

17       53. Full Settlement. This Consent Decree constitutes a full and final  
18 settlement of this matter.

19       54. Integration Clause. This is an integrated Consent Decree. This  
20 Consent Decree and a letter agreement signed on behalf of both parties and dated  
21 August 5, 2024, is intended to be a full and complete statement of the terms of the  
22 agreement between the Parties and expressly supersedes any and all prior oral or  
23 written agreements, covenants, representations, and warranties (express or  
24 implied) concerning the subject matter of this Consent Decree.

55. Severability. In the event that any provision, paragraph, section, or sentence of this Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

56. Choice of Law. The laws of the United States shall govern this Consent Decree.

57. Diligence. Defendant shall diligently file and pursue all required permit applications for the structural BMPs and shall diligently procure contractors, labor, and materials needed to complete all BMPs by the required deadlines.

58. Effect of Consent Decree. Compliance with this Consent Decree does not mean that Defendant is complying with the Industrial General Permit, the Clean Water Act, or any other law, rule, or regulation nor does non-compliance mean that Defendant is not complying with the Industrial General Permit, the Clean Water Act, or any other law, rule, or regulation.

59. Negotiated Settlement. The Settling Parties have negotiated this Consent Decree, and agree that it shall not be construed against the Party preparing it, but shall be construed as if the Settling Parties jointly prepared this Consent Decree, and any uncertainty and ambiguity shall not be interpreted against any one Party.

60. Modification of the Consent Decree. This Consent Decree, and any provisions herein, may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the Parties and approved by the Court, excepting the extensions described in Paragraph 26 above. Any request to modify any provision of the Consent Decree, including but not limited to any deadline(s)

1 set forth herein, must be made in writing at least fourteen (14) days before the  
2 existing deadline(s) applicable to the provision(s) proposed to be modified.  
3

4       61. Assignment. Subject only to the express restrictions contained in this  
5 Consent Decree, all of the rights, duties and obligations contained in this Consent  
6 Decree shall inure to the benefit of and be binding upon the Parties, and their  
7 successors and assigns. Defendant shall notify Plaintiff within ten (10) days of any  
8 assignment.

9       62. Force Majeure. Neither of the Parties shall be considered to be in  
10 default in the performance of any of their respective obligations under this  
11 Consent Decree when performance is prevented or delayed due to a Force  
12 Majeure Event. For purposes of this Consent Decree, a “Force Majeure Event” is  
13 any circumstance beyond the control of a Settling Party’s, their contractors or any  
14 entity controlled by a Settling Party, including without limitation, any act of God,  
15 war, fire, earthquake, flood, windstorm, pandemic, public health crisis, or natural  
16 catastrophe; criminal acts; civil disturbance, vandalism, sabotage, or terrorism;  
17 restraint by court order or public authority or agency; or action or non-action by,  
18 or inability to obtain the necessary authorizations or approvals from any  
19 governmental agency. A Force Majeure Event shall not include normal inclement  
20 weather, financial, inability to pay, or employee negligence. Any party seeking to  
21 rely upon this Paragraph to excuse or postpone performance shall have the burden  
22 of establishing that it could not reasonably have been expected to avoid the Force  
23 Majeure event and which by exercise of due diligence has been unable to  
24 overcome the failure of performance. The Parties shall exercise due diligence to  
25 resolve and remove any Force Majeure event. Defendant shall provide notice to  
26 Plaintiff orally or by electronic or facsimile transmission as soon as practicable,  
27  
28

1 but not later than ten (10) days after the time Defendant first knew of, or by the  
2 exercise of due diligence, should have known of, a claimed Force Majeure Event.  
3 The notice shall describe the event and the length of any extension sought. If the  
4 Plaintiff agrees that a Force Majeure Event, as defined by this Section, has  
5 occurred, the Plaintiff shall agree to extend the time for Defendant to perform the  
6 affected requirements for the time necessary to complete those obligations.  
7

8 Failures resulting from a Force Majeure Event shall not be considered a breach of  
9 this Consent Decree, and Defendant shall not be liable for any stipulated penalties  
10 occurring as a direct result of the Force Majeure Event, provided Defendant  
11 complies with the terms of this Paragraph. If the Plaintiff does not agree that a  
12 Force Majeure Event, as defined by this Paragraph, has occurred, or does not  
13 agree to the length of the extension of time sought by Defendant, the Plaintiff's  
14 position shall be binding, unless Defendant invokes Dispute Resolution under  
15 Section IV of this Consent Decree. In any such dispute, Defendant bears the  
16 burden of proving, by a preponderance of the evidence, that each claimed force  
17 majeure event is a Force Majeure Event, that Defendant gave the notice required  
18 by this Paragraph, that the Force Majeure Event caused any failure to comply or  
19 delay in compliance with an obligation of this Consent Decree that Defendant  
20 claims was attributable to that event, and that Defendant exercised reasonable  
21 efforts to prevent or minimize any failure or delay in compliance caused by the  
22 event.

23       63. Correspondence. All notices required herein or any other  
24 correspondence pertaining to this Consent Decree shall be, to the extent feasible,  
25 sent via electronic mail transmission to the e-mail address listed below, or if  
26  
27  
28

1 electronic mail is not feasible, then by certified U.S. mail with return receipt, or by  
2 hand delivery to the following addresses:

4 If to Plaintiff:

5 Los Angeles Waterkeeper  
6 Barak Kamelgard  
7 Benjamin Harris  
8 Madeleine Siegel  
9 360 E 2<sup>nd</sup> St., Suite 250  
10 Los Angeles, CA 90012  
11 Email: barak@lawaterkeeper.org  
Email: ben@lawaterkeeper.org  
Email: madeleine@lawaterkeeper.org  
Phone: (310) 394-6162

4 If to Defendant:

5 James Harris  
6 Reed Randel  
7 Holland & Knight, LLP  
8 One Arts Plaza  
9 1722 Routh Street, Suite 1500  
Dallas, Texas 75201  
10 Jim.Harris@hklaw.com  
Reed.Randel@hklaw.com

13 With copies to:

14 Aqua Terra Aeris Law Group  
15 Jason R. Flanders  
Theresa M. Trillo  
16 4030 Martin Luther King Jr. Way  
Oakland, CA 94609  
17 Email: jrf@atalawgroup.com  
Email: tt@atalawgroup.com  
Phone: (916) 202-3018

13 With copies to:

14 Eric Sagehorn  
Eric.sagehorn@bodycote.com  
15 Bodycote Thermal Processing, Inc.  
16 12750 Merit Drive, Suite 1400  
Dallas, TX 75251

20 Notifications of communications shall be deemed submitted three (3) days after  
21 the date that they are postmarked and sent by first-class mail, or immediately after  
22 acknowledgement of receipt via email by the receiving Party. Any change of  
23 address or addresses shall be communicated in the manner described above for  
24 giving notices.

25 64. If for any reason the Federal Agencies should object to entry of this  
26 Consent Decree or to any portion of this Consent Decree or the Court should

1 decline to approve this Consent Decree in the form presented, the Parties shall use  
2 their best efforts to work together to modify the Consent Decree within thirty (30)  
3 days so that it is acceptable to the Federal Agencies or the Court. If the Parties are  
4 unable to modify this Consent Decree in a mutually acceptable manner that is also  
5 acceptable to the Court, this Consent Decree shall immediately be null and void as  
6 well as inadmissible as a settlement communication under Federal Rule of  
7 Evidence 408 and California Evidence Code section 1152 and no obligations  
8 under this Consent Decree will be enforceable against any Party.  
9

10 The Parties hereto enter into this Consent Decree and submit it to the Court  
11 for its approval and entry as a final judgment.  
12

13 IN WITNESS WHEREOF, the undersigned have executed this Consent  
14 Decree as of the date first set forth below.  
15

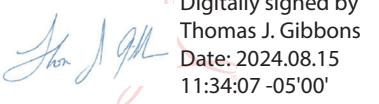
16 APPROVED AS TO CONTENT  
17

18 Dated: August 13, 2024

19 By: 

20  
21  
22  
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26  
27  
28  
Bruce Reznik  
Executive Director  
Los Angeles Waterkeeper

Dated: \_\_\_\_\_, 2024

By: 

Digitally signed by  
Thomas J. Gibbons  
Date: 2024.08.15  
11:34:07 -05'00'

Tom Gibbons  
Divisional President CHT, ADE  
Bodycote Thermal Processing,  
Inc.

1  
2  
3  
4 APPROVED AS TO FORM

5 AQUA TERRA AERIS LAW GROUP  
6

7 Dated: August 13, 2024

8 By:   
9 Jason R. Flanders  
10 Attorney for Plaintiff  
11 LOS ANGELES  
12 WATERKEEPER

13 HOLLAND & KNIGHT LLP

14 Dated: August 15, 2024

15 By:   
16 James B. Harris  
17 Attorney for Defendant  
18 BODYCOTE THERMAL  
19 PROCESSING, INC.

20  
21 **IT IS SO ORDERED.  
FINAL JUDGMENT**

22 Upon approval and entry of this Consent Decree by the Court, this Consent  
23 Decree shall constitute a final judgment between the Plaintiff and Defendant.

24 CENTRAL DISTRICT OF CALIFORNIA

25 Dated: October 2, 2024

26   
27 HON. MONICA RAMIREZ ALMADANI  
28 United States District Court Judge

CONSENT DECREE